

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Ameriloan

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on January 12, 2012, for a prehearing conference at the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, Ameriloan, did not appear in person or by counsel.

At the Prehearing Conference, the ALJ notified counsel for the Department that there was a defect in the Notice of and Order for Hearing, Order of Prehearing Conference and Amended Charges, and directed that an Amended Statement of Charges be served. On January 25, 2012, the Amended Statement of Charges was served on Respondent.

STATEMENT OF ISSUE

Did Respondent engage in unlicensed consumer small loan activity in the State of Minnesota by failing to register as a small loan lender and making a small consumer loan via the Internet, in violation of Minn. Stat. § 47.60, subd. 3?¹

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, dated November 28, 2011, served upon Respondent at the address where, upon information and belief, it conducts business over the Internet.

¹ Minnesota Statutes are cited to the 2010 Edition.

2. By letter dated December 7, 2011, the ALJ restated the date, time and place of the prehearing conference and provided additional information.

3. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges contained the following informational warning:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed disciplinary action may be upheld.

4. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

5. On January 25, 2012, the Amended Statement of Charges was served on Ameriloan, at the address where, upon information and belief, it conducts business over the Internet.

6. The Amended Statement of Charges was submitted to the ALJ, with a request from the Department that the Respondent be required to submit a written notice of appearance within 30 days, and if it failed to do so, that a default order entered.

7. On January 27, 2012, the ALJ issued an Order to File Notice of Appearance and Response, notifying Respondent that it was required to file a Notice of Appearance and respond to the Amended Statement of Charges by March 1, 2012. The Order stated:

Failure to file a Notice of Appearance and respond to the Amended Statement of Charges shall result in a recommendation of default, a determination that the Department's allegations are true, and that the Department's proposed disciplinary action may be upheld.

8. Respondent did not file a Notice of Appearance or Response.

9. Upon receiving the Amended Statement of Charges, the Respondent did not file a Notice of Appearance or a response, nor has it communicated in any other way with the ALJ.

10. Because Respondent has failed to appear or file a response, it is in default.

11. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Amended Statement of Charges, are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.024, 45.027, subd. 1, and 14.50.

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent engaged in unlicensed consumer small loan activity in the State of Minnesota by failing to register as a small loan lender and making a consumer loan via the Internet, in violation of Minn. Stat. § 47.60, subd. 3.

7. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Commerce take adverse action against Respondent, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 2nd day of April, 2012.

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default (no recording)

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael Rothman, Commissioner, Department of Commerce, (Melissa Knoepfler), Suite 500, 85 Seventh Place East, St. Paul, MN 55101, telephone number: 651-296-2715, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

B.J.H.